

LEGISLATIVE RESEARCH COMMISSION

**MUNICIPAL POWER AGENCY RELIEF
COMMITTEE**

NORTH CAROLINA GENERAL ASSEMBLY



**REPORT TO THE
2012 SESSION
of the
2011 GENERAL ASSEMBLY
OF NORTH CAROLINA**

MAY 8, 2012

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TRANSMITTAL LETTER

May 16, 2012

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TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Municipal Power Agency Relief, pursuant to G.S. 120-30.17(1).

Respectfully submitted,



Senator Philip E. Berger
President Pro Tempore of the Senate



Representative Thomas R. Tillis
Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

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LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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2011 – 2012

President Pro Tempore of the Senate

Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives

Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

PREFACE

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The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Municipal Power Agency Relief, under authority of G.S. 120-30.17(1). The Committee was chaired by Senator E.S. (Buck) Newton and Representative Jeffrey L. Collins, Co-Chairs of the Committee. The full membership of the Committee is listed under [Committee Membership](#). A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

COMMITTEE PROCEEDINGS

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The Legislative Research Commission's Committee on Municipal Power Agency Relief met four times after the 2011 Regular Session. The Committee's Charge can be found [here](#). The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

History of the Joint Municipal Power Agencies

In 1975, the General Assembly enacted the "Joint Municipal Power and Energy Act" which allows municipal electric systems to band together to own electric generation facilities. The Act enabled local government units with municipal power distribution systems to form a joint agency to own and operate electric generation facilities. Joint agencies created under the Act were authorized to issue revenue bonds to finance the costs of a project. In 1977, the people of North Carolina approved an amendment to the North Carolina Constitution to allow the Power Agencies to own generation facilities, and to issue revenue bonds to finance the facilities. Shortly after the Act, North Carolina Municipal Power Agency Number 1 (NCMPA1) and the North Carolina Eastern Municipal Power Agency (NCEMPA) were formed. There are currently 70 cities offering electric service in North Carolina; NCMPA1 has 19 members; NCEMPA has 32 members; and 19 other cities offer electric service but do not belong to either of the Municipal Power Agencies.

It is important to note the municipalities had compelling economic motives for seeking ownership interest in power plants. In the 1970s, fuel and electricity prices were climbing while demand for energy was growing. By purchasing interest in generation facilities, the municipalities sought to guarantee a source of electricity that was less expensive than purchases on the wholesale market. Unfortunately for the Municipal Power Agencies, many of the economic motives that led to the original purchase of the generation facilities changed by the 1980s. As energy conservation efforts were successful, demand for electricity fell. Fuel prices declined. Most importantly, the regulatory environment for nuclear facilities changed after the incident at the Three Mile Island facility in Pennsylvania. These regulatory changes increased the construction costs for nuclear facilities while financing costs were also increased due to the historically high interest rates of the early 1980s.

The joint municipal power agencies' ownership interest in the generation facilities was financed with revenue bonds. The NCMPA1 has a 75 percent ownership interest in Catawba Nuclear Station Unit 2. This plant is operated by Duke Power and located in York County, S.C. NCMPA1 also has an agreement with Duke that provides for electric power via McGuire Nuclear Station and Catawba Unit 1 should Catawba 2 be unavailable for service. The debt for the NCMPA1 as of January 2, 2012 is \$1,453,730,000. The debt is scheduled to be retired in 2031.

The NCEMPA owns interest in five generating units built and operated by Progress Energy. These facilities include three nuclear units, 2 units at the Brunswick Plant in Brunswick County, and 1 unit at Shearon Harris Plant in Wake County. The NCEMPA also owns an interest in two coal-fired plants in Person County. The debt for the NCEMPA as of January 2, 2012 is \$2,105,495,000. The debt is scheduled to be retired in 2025.

A list of the debt responsibility of each city member of the municipal power agencies is attached in Appendix D.

ElectriCities is the membership organization of municipal and university operated electric systems in North Carolina, South Carolina, and Virginia. ElectriCities also provides management services to the municipal power agencies in North Carolina

October 25, 2011

The first meeting of the Legislative Research Commission's Committee on Municipal Power Agency Relief took place on October 25, 2011 at 9:30 a.m. in room 643 of the Legislative Office Building.

The Committee first heard a presentation on the history of the joint municipal power agencies from Committee Staff. The Committee also heard a presentation from two representatives of the State and Local Government Division of State Treasurer's Office. Vance Holland, Deputy Treasurer, and Tim Romocki, Local Debt Management, gave a presentation on the debt incurred by the joint municipal power agencies.

The Committee also heard from local business leaders on the impact of the debt of the municipal power agencies on economic development in the Eastern part of the State. The local business leaders who spoke were Billy Lamm, Chairman, Lamm & Company Partners, Thomas Joyner, President, Nash Produce, and Lee Stephenson, President, Stephenson Millwork.

At the end of the Committee's official agenda, the Chairs allowed for public comment. Andre Knight and Ruben Blackwell of the Rocky Mount City Council provided comments to the Committee.

January 10, 2012

The second meeting of the Legislative Research Commission's Committee on Municipal Power Agency Relief took place on January 10, 2012 at 1:30 p.m. in room 544 of the Legislative Office Building.

The Committee first heard from Thomas Stith of the Kenan Institute for Private Enterprise. Mr. Stith presented on the high rates of the joint municipal power agency member cities.

The Committee then heard from Graham Edwards, the Chief Executive Officer of EletriCities. EletriCities is the membership organization of municipal and university operated electric systems in North Carolina, South Carolina, and Virginia. Mr. Edwards presented on the history of the organization, and debt of the joint municipal power agencies, and the future of EletriCities and the joint municipal power agencies. The final presentation to the Committee at the second meeting was on the rate setting procedures of city members of the joint municipal power agencies. Mark Williams, town manager of Wake Forest and Ron Elks, General Manager of Greenville Utilities Commission presented on the operation of the electric systems in each of their cities.

March 7, 2012

The third meeting of the Legislative Research Commission's Committee on Municipal Power Agency Relief took place on March 7, 2012 at 1:30 p.m. in room 544 of the Legislative Office Building.

Committee staff reviewed the proposed findings and recommendations of the Committee. The Committee amended the proposed findings and recommendations and then voted to approve the amended findings and recommendations. The Committee staff was directed to draft legislation in accordance with the Committee recommendations, and to prepare the draft report of the Committee.

April 5, 2012

The fourth meeting of the Legislative Research Commission's Committee on Municipal Power Agency Relief took place on April 5, 2012 at 1:30 p.m. in room 544 of the Legislative Office Building.

Committee staff reviewed the draft report of the Committee. The Committee voted to approve the final report. The Committee staff was directed to prepare the final report of the Committee for submission to the Legislative Review Commission.

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FINDINGS AND RECOMMENDATIONS

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Detailed minutes and copies of materials from each Committee meeting are available in the Legislative Library.

The Debt

Finding #1: At this time, the rates of the municipal electric systems operated by members of the North Carolina Eastern Municipal Electric Power Agency (NCEMPA) are significantly higher than the rates for service offered by the investor owned utilities. The higher rates are due to the large debt incurred by NCEMPA to finance the purchase of electric generation facilities in the 1970's. ¹ Thirty-eight percent (38%) of the wholesale rate for electricity paid by members of NCEMPA is used to pay this debt.² However, the rates of the municipal electric systems vary between the members.³

Finding #2: The total debt of NCEMPA as of January 1, 2011 is \$2,254,510,000. Each member of NCEMPA is responsible for a portion of the total debt of the power agency. The debt responsibility of each member of NCEMPA is attached as attachment #1. ⁴

Finding #3: Electricities has proactively worked to restructure the debt to take advantage of the changing bond market.⁵

Finding #4: In the current bond market there would be limited short term advantages and long term disadvantages to refunding the debt. Due to the bond market and the nature of the indebtedness, it would not be advantageous at this time to restructure the debt.⁶

Finding #5: Due to federal tax regulations and the structure of the bonds, a large portion of the debt cannot be refunded at this time. Approximately one half of the debt cannot be called before its maturity date.⁷

Impact and Economic Development

¹ Presentation of Vance Holloman, State and Local Government Division of State Treasurer's Office, October 25, 2011.

² Presentation of CEO Graham Edwards, Electricities, January 10, 2012.

³ Presentations of Wake Forest Town Manager Mark Williams, and General Manager of Greenville Utilities Commission Ron Elks, January 10, 2012.

⁴ Presentation of CEO Graham Edwards, Electricities, January 10, 2012.

⁵ Presentation of CEO Graham Edwards, Electricities, January 10, 2012.

⁶ Presentation of Vance Holloman, State and Local Government Division of State Treasurer's Office, October 25, 2011.

⁷ Presentation of Vance Holloman, State and Local Government Division of State Treasurer's Office, October 25, 2011.

Finding #6: The high electric rates of the NCEMPA member cities have affected economic development in these cities. Individuals with businesses in these cities provided testimony to the Committee on the economic impact of the electric rates.⁸

Finding #7: The effect of the electric rates on economic development differs between the NCEMPA member cities. Cities with greater growth have not been as severely impacted as cities with less growth.⁹

Finding #8: The high electric rates in the NCEMPA member cities exacerbate the effects of the loss of industrial businesses.¹⁰

Finding #9: Dr. Thomas Stith of the Kenan Institute of Private Enterprise found the rate payers in NCEMPA have paid \$240 million more in electric rates each year as compared to other rate payers in the State.¹¹

Potential Solutions

Finding #10: ElectriCities is actively engaged in exploring the idea of selling generation assets.¹²

Finding #11: The sale of generation assets cannot be further explored at this time due to the potential regulatory changes faced by the investor owned utilities in the State. The sale of generation assets is a potential solution that should be explored further.¹³

Finding #12: ElectriCities has been proactively looking for possible solutions to the problems created by the higher rates.¹⁴

Further Study

Finding #13: Development of solutions to the problem of high electric rates in the NCEMPA member cities would be aided by an in depth study of the economic impact of the higher rates on Eastern North Carolina and potential impact of the higher rates on the State as a whole.

⁸ Presentation of local business leaders, Billy Lamm, Chairman, Lamm & Company Partners, Thomas Joyner, President, Nash Produce, and Lee Stephenson, President, Stephenson Millwork, October, 25, 2011.

⁹ Presentation of local business leaders, Billy Lamm, Chairman, Lamm & Company Partners, Thomas Joyner, President, Nash Produce, and Lee Stephenson, President, Stephenson Millwork, October, 25, 2011.

¹⁰ Presentation of local business leaders, Billy Lamm, Chairman, Lamm & Company Partners, Thomas Joyner, President, Nash Produce, and Lee Stephenson, President, Stephenson Millwork, October, 25, 2011.

¹¹ Presentation of Thomas Stith, Kenan Institute of Private Enterprise, January 10, 2012.

¹² Presentation of CEO Graham Edwards, ElectriCities, January 10, 2012.

¹³ Presentation of CEO Graham Edwards, ElectriCities, January 10, 2012.

¹⁴ Presentation of CEO Graham Edwards, ElectriCities, January 10, 2012.

Finding #14: Further study of the electric rates in the NCEMPA member cities should include the exploration of the following areas:

- Value of the generation facilities owned by NCEMPA.
- Need for electric generation capacity in the State now and in the future.
- Expected electricity demand in the future.
- Potential of new energy sources to meet future electricity demands.
- Effect of rate preferences on all rate payers including small to medium size businesses, and residential users.

Recommendations

Recommendation #1: When feasible, the effects of the high electric rates on the NCEMPA member cities should be studied further. When conducted, the study should include exploration of the following areas:

- Value of the generation facilities owned by NCEMPA.
- The effect of the electric rates on the economic development of Eastern North Carolina and the State as a whole. The Kenan Institute of Private Enterprise may provide an in depth study of the economic impact of the higher rates.
- Need for electric generation capacity in the State now and in the future.
- Expected electricity demand in the future.
- Potential of new energy sources to meet future electricity demands.
- Effect of rate preferences on all rate payers including small to medium size businesses, and residential users.
- Other matters the Commission deems relevant.

Recommendation #2: S.L. 2011-129 is a local bill that requires the cities of Clayton, Selma, and Smithfield to limit the use of revenue from electric rates. This revenue may only be used to (1) pay the direct and indirect costs of the electric system, (2) provide a set rate of return to the city for its capital investment, and (3) reduce rates for electric service or make payments on the debt incurred for the electric system. This restriction should be applied to all NCEMPA member cities.

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COMMITTEE MEMBERSHIP

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2011-2012

President Pro Tempore of the Senate
Appointments:

Senator E.S. (Buck) Newton, Co-Chair
Senator Andrew Brock
Senator Eric Mansfield
Senator Wesley Meredith
Senator Robert Rucho

Speaker of the House of Representatives
Appointments:

Representative Jeffrey Collins, Co-Chair
Representative William Brawley
Representative Jimmy Dixon
Representative William Owens
Representative Paul Stam

COMMITTEE CHARGE

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Study potential options to provide relief to customers of the joint municipal power agencies from high electric rates, including:

1. The feasibility of refinancing or restructuring the debt of the power agencies.
2. The feasibility of selling assets of the municipalities or the power agencies to lower electric rates or the total amount of debt.

STATUTORY AUTHORITY

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NORTH CAROLINA GENERAL STATUTES ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

- (1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.
- (2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.
- (3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.
- (5), (6) Repealed by Session Laws 1981, c. 688, s. 2.
- (7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.
- (8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.
- (9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

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SUPPORTING DOCUMENTATION

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NCEMPA Debt Responsibility by Power Agency Participants

(as of 1/2/2012)

Debt Outstanding: \$2,105,495,000.00

City	Percentage	Responsibility
Apex	0.7056 %	\$14,856,373
Ayden	1.1340 %	\$23,876,313
Belhaven	0.4090 %	\$8,611,475
Benson	0.5773 %	\$12,155,023
Clayton	0.7448 %	\$15,681,727
Edenton	1.5961 %	\$33,605,806
Elizabeth City	4.2510 %	\$89,504,592
Farmville	1.2901 %	\$27,162,991
Fremont	0.3062 %	\$6,447,026
Greenville	16.1343 %	\$339,706,880
Hamilton	0.0783 %	\$1,648,603
Hertford	0.4124 %	\$8,683,061
Hobgood	0.0913 %	\$1,922,317
Hookerton	0.1550 %	\$3,263,517
Kinston	8.6678 %	\$182,500,096
LaGrange	0.5014 %	\$10,556,952
Laurinburg	2.2675 %	\$47,742,099
Louisburg	0.8577 %	\$18,058,831
Lumberton	5.1568 %	\$108,576,166
New Bern	6.3676 %	\$134,069,500
Pikeville	0.2046 %	\$4,307,843
Red Springs	0.5798 %	\$12,207,660
Robersonville	0.5066 %	\$10,666,438

City	Percentage	Responsibility
Rocky Mount	16.0260 %	\$337,426,629
Scotland Neck	0.5762 %	\$12,131,862
Selma	0.8102 %	\$17,058,720
Smithfield	2.0056 %	\$42,227,808
Southport	0.7139 %	\$15,031,129
Tarboro	4.7427 %	\$99,857,311
Wake Forest	0.7262 %	\$15,290,105
Washington	5.8920 %	\$124,055,765
Wilson	15.5120 %	\$326,604,384

Interest payments are due and payable on January 1 and July 1 each year. Principal payments are due and payable January 1 each year.

LEGISLATIVE PROPOSALS

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

D

BILL DRAFT 2011-TDz-14 [v.2] (03/07)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/13/2012 11:56:19 AM

Short Title: NCEMPA/Use of Rate Revenue.

(Public)

Sponsors: Senator.

Referred to:

- 1 A BILL TO BE ENTITLED
2 AN ACT PROVIDING THAT THE CITIES AND TOWNS THAT ARE
3 MEMBERS OF THE NORTH CAROLINA EASTERN MUNICIPAL
4 POWER AGENCY SHALL USE REVENUE DERIVED FROM RATES FOR
5 ELECTRIC SERVICE FOR PAYING THE DIRECT AND INDIRECT
6 COSTS OF OPERATING THE ELECTRIC SYSTEM, TRANSFERRING
7 AMOUNTS THAT REPRESENT A RATE OF RETURN ON THE
8 INVESTMENT IN THE ELECTRIC SYSTEM, AND MAKING DEBT
9 SERVICE PAYMENTS.
10 The General Assembly of North Carolina enacts:
11 SECTION 1. Section 2 of S.L. 2011-129 reads as rewritten:
12 "SECTION 3. This act only applies to the cities and towns that are
13 members of the North Carolina Eastern Municipal Power Agency."
14 SECTION 2. This act is effective July 1, 2013.